FILE COPY

Office-Supreme Court, U.S.
FILED
NOV 4 1959
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

No. 120 October Term, 1959

JONES MOTOR CO., INC.

vs.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION FOR RECONSIDERATION AND CLARIFICATION

WILLIAM A. GOICHMAN
Assistant Counsel
EDWARD MUNCE
Assistant Counsel
THOMAS M. KERRIGAN
Counsel
For Pennsylvania Public Utility Commission

North Office Building,
Harrisburg, Pennsylvania

Murrelle Printing Company, Law Printers, 201-3 Lockhart St., Sayre, Pa.

PETITION FOR RECONSIDERATION AND CLARIFICATION

---

1. On October 12, 1959, at No. 120 October Term, 1959, your Honorable Court, in a Per Curiam memorandum order, granted the petition for writ of certiorari in the above-styled cause and, simultaneously, reversed the judgment of the court below, merely citing *Service Storage and Transfer Company, Inc. v. Virginia*, 359 U. S. 171 (1959).

2. Reference being made to *Service Storage*, it appears that the express holding thereof was that the transportation complained of was not to be challenged in a state tribunal, but only before the Interstate Commerce Commission, the opinion of your Honorable Court stating:

> "We agree with the petitioner that under the facts here the interpretation of petitioner's interstate commerce certificate should first be litigated before the Interstate Commerce Commission under the provision of §204(c) of the Interstate Commerce Act, 49 U.S.C. §304(c)." Page 173.
>
> "It appears clear that interpretations of federal certificates of this character should be made in the first instance by the authority issuing the certificate and upon whom the Congress has placed the responsibility of action." Page 177.

3. Seemingly to underscore the fact that the holding of your Honorable Court was posited upon want of jurisdiction in the tribunals of the Commonwealth of Virginia, and that the Commonwealth still might and may challenge petitioner's operation, the opinion concluded with the following declaration:

> "Finally, the Commonwealth is not helpless to act. If it believes that petitioner's operation is not bona fide interstate but is merely a subterfuge to escape its jurisdiction, *it can avail itself* of the remedy Congress has provided in the Act." Page 179, emphasis supplied.

4. There are, however, *obiter dicta* in *Service Storage* which may be interpreted to bear on or prejudge the merits of that controversy; which are irrelevant to deciding whether the state tribunal had, or did not have jurisdictional power (as distinguished from its proper exercise of such power); and which tend to imply that recourse to the Interstate Commerce Commission by the state would in that controversy be unavailing: *e.g.*, the discussion of petitioner's subjective intent at pages 175-176, which, indeed, concludes with the disclaimer that "[w]hile these considerations *are not controlling*, they throw light on petitioner's claim of bona fides" (emphasis supplied). Manifestly, even bad faith in petitioner would not create jurisdictional power in a state tribunal, nor would petitioner's good faith vitiate such power if it otherwise existed.

5. The Commonwealth of Pennsylvania, through its Public Utility Commission, is now commencing

complaint proceedings before the Interstate Commerce Commission to challenge the operation of Jones Motor Co., Inc. for the reasons set forth in the Pennsylvania Commission's brief filed with your Honorable Court in the instant cause. Whether such operation is "practical, efficient, and profitable"—to employ the words of the *dictum* at page 176 of the opinion of your Honorable Court—has no bearing on the question whether such operation *has been authorized* by the Interstate Commerce Commission, which is the primary question in the present controversy; and has little bearing on the collateral question of subterfuge in crossing "state lines . . . for the sole purpose of *creating* an interstate operation" (page 178 of the opinion of your Honorable Court) because a carrier has no incentive to perpetrate a subterfuge which is not sufficiently practical and efficient to be *profitable*. This *dictum*, and others, may mislead, or be used to mislead, the parties to the forthcoming proceedings before the Interstate Commerce Commission, or that tribunal itself, into supposing that the order of your Honorable Court in the instant cause looked to the merits thereof, instead of being limited to the jurisdictional issue which was the true rationale of *Service Storage*.

WHEREFORE, Pennsylvania Public Utility Commission, by its counsel, respectfully prays your Honorable Court to file a clarifying opinion or memorandum order expressly stating that the judgment of the court below was reversed on jurisdictional grounds, without regard to the merits of the controversy in the instant cause.

And it will ever pray, *etc.*

WILLIAM A. GOICHMAN
Assistant Counsel
EDWARD MUNCE
Assistant Counsel
THOMAS M. KERRIGAN
Counsel
For Pennsylvania Public
Utility Commission

North Office Building
Harrisburg, Pennsylvania
28th October 1959